



Report to the Auburn City Council

Action Item
Agenda Item No. **14**

[Signature]
City Manager's Approval

To: Honorable Mayor and City Council Members
From: Robert Richardson, City Manager
Date: November 25, 2013
Subject: Assignment/Assumption and Amendment of Auburn Airport Industrial Park Land Lease (a portion of Lot 2) for Premier Holdings, LLC, doing business as Pacific Power Management.

The Issue

Shall the City Council consent to the assignment and assumption of an existing land lease, previously assigned and originally held by three individuals (David W. Dwelle, Mark F. and Sharon Lynn Jensen Frederick, husband and wife) to Premier Holdings, LLC, a California limited liability company, whose sole member and manager is David W. Dwelle and further authorize the execution of the related document? A judicial foreclosure, sheriff's sale and subsequent quitclaim recordation, earlier this 2013 summer/fall, released any interest, if any, the Fredericks had in the leased premises.

Additionally, in a subsequent action, further authorization is sought to amend the lease, which would lengthen the existing lease by a period of approximately 11 years, such that the lease would expire on October 25, 2048.

Conclusions and Recommendations

By **RESOLUTION**, authorize the City Manager or his designee to first approve the assignment and assumption of the subject land lease between the City of Auburn and David W. Dwelle, acknowledging the legal proceedings relating to the Fredericks in this matter, to Premier Holdings, LLC and authorize the execution of all related documents.

In a second action, by **RESOLUTION**, authorize the City Manager or his designee to approve the lease amendment (lease extension), in favor of Premier Holdings, LLC, for the period identified and further authorize the execution of all related documents.

Background

On October 26, 1987, the City of Auburn, as Lessor, entered into a lease with Earhart Technical Center, a California general partnership, as Lessee, for the lease of land commonly known as 12970 and 12972 Earhart Ave, Auburn, CA, (a portion of Lot 2) for

a term of fifty (50) years. Subsequently, on November 13, 2003, the lease was assigned to three individuals, David W. Dwelle, Mark and Sharon Frederick. The assignment to the individuals included a lease termination date consistent with the original lease, that being October 25, 2037.

Analysis

As a means to facilitate the assignment of the lease, David W. Dwelle has requested the City's consent to assign the leasehold interests for the above referenced premises to Premier Holdings, LLC. Premier Holdings, LLC is currently doing business at the premises location as Pacific Power Management. In a second action, David W. Dwelle, manager of Premier Holdings, LLC, has requested the existing lease, now assigned to Premier Holdings, LLC, be amended, generating an lease termination extension of approximately eleven (11) years, thus terminating on October 25, 2048, for refinancing purposes. In addition to the City's approval of the lease assignment and extension, staff recommends the City consent to the execution of any related documents including the recording, by the Placer County Recorder's Office, of memoranda of lease for the affected parcel, if necessary.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution authorizing the City Manager or his designee to approve the assignment/assumption and lease amendment of the land lease between the City of Auburn and Premier Holdings, LLC and further authorize the execution of all related documents.
2. Do not adopt a resolution and direct staff accordingly.

Fiscal Impact

None. The current monthly lease amount will be assumed by the assignee to the lease.

Attachments – Assignments of Lease with Consent

Second Amendment to Lease (lease extension with conditions)

Resolutions (2)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Aronowitz Skidmore Lyon
200 Auburn Folsom Road, Suite 305
Auburn, CA 95603

Space above this line for Recorder's Office

APN: 860-000-394-000

ASSIGNMENT OF AUBURN AIRPORT
INDUSTRIAL PARK INDUSTRIAL SITE LEASE WITH CONSENT
(AUBURN MUNICIPAL AIRPORT INDUSTRIAL PARK)
PORTION OF LOT # 2

This Assignment of Lease with Consent ("**Assignment**") dated as of _____, 201__ (the "**Effective Date**") is made and entered into for good and valuable consideration by and between David W. Dwelle, an unmarried man, ("**Assignor**") and Premier Holdings, LLC, a California limited liability company ("**Assignee**"), with reference to the following facts:

RECITALS

A. City of Auburn, a Municipal Corporation, as Lessor, and Earhart Technical Center, a California general partnership, as Lessee, executed that certain Auburn Airport Industrial Park Industrial Site Lease ("**Lease**") on October 26, 1987, for the lease of premises commonly known as 12970 and 12972 Earhart Avenue, Auburn, California (the "**Leased Premises**"), which Leased Premises are a portion of Lot #2, and are more particularly described on Exhibit A hereto.

B. The Lease was assigned on November 13, 2003, to Dwelle and Mark F. Frederick and Sharon Lynn Jensen Frederick, husband and wife ("**Frederick**"), as to an undivided 50% interest.

C. Frederick's interest, if any, in the Leased Premises was thereafter foreclosed upon by Dwelle at a judicial foreclosure and sheriff's sale on August 15, 2013.

D. In addition, Frederick quitclaimed any interest they may have had in the Leased Premises to Dwelle, by quitclaim deed recorded in the Placer County Recorder's Office, on October 16, 2013, as Doc ID No 2013-0098441-00.

E. By the terms of the Lease the Leased Premises were leased to Assignor as Lessee for a term of fifty (50) years, commencing on October 26, 1987, and ending on October 25, 2037.

F. Assignor now desires to assign the Lease to Assignee, and Assignee desires to accept the assignment thereof.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor, Assignee and City agree as follows:

1. Effectiveness. This Assignment shall be effective as of the Effective Date.
2. Assignment, Assumption and Consent. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Lessee" under the Lease with respect to the Leased Premises and the improvements constructed thereon. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations of the "Lessee" under Lease that relate to the Leased Premises and the improvements constructed thereon. The City hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.
3. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" occurring on and after the Effective Date.
4. Entire Agreement. This Assignment, together with the Lease is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Assignment. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.
6. Third Party Beneficiaries. No third party shall have any rights under this Assignment.

7. Subject to Lease. This Assignment is subject to all the terms, conditions and provisions of the Lease.

ASSIGNOR:

David W. Dwelle, an unmarried man

ASSIGNEE:

Premier Holdings, LLC, a California limited liability company

By: _____
Name: David W. Dwelle
Its: sole member and manager

CITY:

THE CITY OF AUBURN,
a municipal corporation

By: _____
Robert Richardson
City Manager

Attest:

Joseph J. R. LaBrie
City Clerk

Approved as to form:

Michael G. Colantuono
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

THAT CERTAIN LEASEHOLD ESTATE FOR THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF PLACER, CITY OF AUBURN, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 13 NORTH, RANGE 8 EAST, M.D.B.&M., ERRONEOUSLY DESCRIBED AS BEING A PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER:

COMMENCING AT A POINT WHICH BEARS THE FOLLOWING (2) CONSECUTIVE COURSES AND DISTANCES FROM THE NORTHEAST CORNER OF SECTION 28, TOWNSHIP 13 NORTH, RANGE 8 EAST, M.D.B.&M.,

1. SOUTH 00 DEGREES 24'08" EAST 2643.07 FEET
2. SOUTH 89 DEGREES 44'30" WEST 526.93 FEET TO THE TRUE POINT OF BEGINNING; SAID POINT BEING THE SOUTHEAST CORNER OF LOT #2. SAID LOT SHOWN ON THE UNRECORDED MAP OF AUBURN AIRPORT INDUSTRIAL PARK, PHASE I, PREPARED IN OCTOBER 1975 BY AUBURN ENGINEERS AND PLANNERS FOR THE CITY OF AUBURN.

THENCE FROM SAID POINT OF BEGINNING SOUTH 89 DEGREES 44'30" WEST 146.00 FEET; THENCE NORTH 00 DEGREES 10'23" WEST 500.00 FEET, THENCE NORTH 89 DEGREES 44'30" EAST 146.00 FEET; THENCE SOUTH 00 DEGREES 10'23" EAST 500 FEET TO THE POINT OF BEGINNING.

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RESOLUTION NO. 13-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN
APPROVING THE ASSIGNMENT AND ASSUMPTION OF THE LAND LEASE
BETWEEN THE CITY OF AUBURN AND DAVID W. DWELLE

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn hereby authorizes the City Manager or his designee to approve the assignment and assumption of the subject land lease between the City of Auburn and David W. Dwelle, acknowledging the legal proceedings relating to the Fredericks in this matter, to Premier Holdings, LLC and authorize the execution of all related documents.

DATED: November 25, 2013

Kevin Hanley, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 25th day of November, 2013 by the following vote on roll call:

Ayes:

Noes:

Absent:

Stephanie L. Snyder, City Clerk

SECOND AMENDMENT TO AUBURN AIRPORT INDUSTRIAL PARK
INDUSTRIAL SITE LEASE

THIS SECOND AMENDMENT TO LEASE ("Amendment"), dated as of _____, 2013 (the "Effective Date"), is made by and between the City of Auburn, a municipal corporation ("City") and Premier Holdings, LLC, a California limited liability company ("Lessee").

RECITALS

A. City of Auburn, a Municipal Corporation, as Lessor, and Earhart Technical Center, a California general partnership, as Lessee, executed that certain Auburn Airport Industrial Park Industrial Site Lease ("**Lease**") on October 26, 1987, for the lease of Leased Premises commonly known as 12970 and 12972 Earhart Ave., Auburn, California, which Leased Premises are a portion of Lot #2, and as more particularly described on Exhibit A hereto.

B. The Lease was assigned on November 13, 2003, to David W. Dwelle, Mark R. Frederick and Sharon Lynn Jensen Frederick.

C. The interest of Mark R. Frederick and Sharon Lynn Jensen Frederick (the "Fredericks"), if any, in the Leased Premises was thereafter foreclosed upon by Dwelle at a judicial foreclosure and sheriff's sale on August 15, 2013.

D. In addition, the Fredericks quitclaimed any interest they may have had in the Leased Premises to Dwelle, by quitclaim deed recorded in the Placer County Recorder's Office, on October 16, 2013, as Doc ID No 2013-0098441-00.

E. By the terms of the Lease the Leased Premises were leased to Assignor as Lessee for a term of fifty (50) years, commencing on October 26, 1987, and ending on October 25, 2037.

F. By this Amendment, the parties intend to extend the term of the lease as provided herein.

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Leased Term. Paragraph 3 of the Lease is amended by deleting the phrase "the 25th day of October, 2037" and inserting in its stead the phrase "the 25th day of October, 2048." The remainder of Paragraph 3 is not amended.
2. Fixed Rental. Section 7 of the Lease is hereby amended by adding a new Section (d) as follows:

(d) Effective as of January 1, 2038 (the "Adjustment Date"), at the request of either party, the annual rental shall be adjusted to correspond with the Fair Market Rental Value ("FMRV") of the Leased Premises.

(1) The Fair Market Rental Value shall be established according to the following standards:

- a. FMRV shall be the then current fair market value of rent for the Leased Premises as of that Adjustment Date, excluding the value added to the fair market value of Rent by virtue of the construction by Lessee of the improvements constructed on the Leased Premises.
- b. The FMRV shall be established according to the rental rates at which tenants lease comparable land for similar purposes at comparable industrial parks at the time of the adjustment.
- c. The FMRV for comparable land shall not be established by a simple averaging of rental rates, but shall be weighted in comparison to the Auburn Airport industrial park to reflect relative size, the population, the supporting and surrounding commercial development and its value, and such other factors as shall fairly compare the rental rates at each respective comparable location.
- d. In the event the parties are unable to establish by agreement what sum represents the FMRV of the Leased Premises, it shall be determined as follows:
 - i. Within 15 days after the Adjustment Date the parties shall select a licensed appraiser, or a licensed and practicing real estate broker, who must have at least 10 years' experience and be familiar with Placer and surrounding counties. Within 15 days after selection of such neutral, each party shall submit to the neutral its determination of the FMRV together with the assumptions, calculations, methods and comparables underlying its determination. Within 15 days after receipt of both parties' determination of FMRV the independent realtor shall select one of the party's determination of FMRV, and that shall be the FMRV as of the Adjustment Date. The independent realtor shall not recalculate FMRV, nor select an FMRV between the two parties' determinations; the only authority of the independent realtor is to choose one of the parties' determination of the FMRV. The parties shall bear the cost of the independent realtor equally.

ii. Provided however, that if neither party requests a FMRV adjustment prior to a new Base Year, then the annual rent for the new Base Year shall be the annual rent for the prior year adjusted in accordance with the provisions of §7(c) above.

e. On every fifth (5th) anniversary of the Adjustment Date thereafter through the end of the lease term, the annual rent shall be adjusted as provided at §7(c) above.

3. No Other Changes. Except as expressly modified by this Amendment, all other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

“CITY”

CITY OF AUBURN, CALIFORNIA, a
Municipal Corporation

By: _____
Robert Richardson
City Manager

“LESSEE”

PREMIER HOLDINGS, LLC, a
California limited liability company

By: _____
David W. Dwelle, its sole member and
manger

APPROVED AS TO FORM:

Michael Colantuono, City Attorney

EXHIBIT A

DESCRIPTION OF THE LEASED PREMISES

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EXHIBIT A

1 RESOLUTION NO. 13-

2 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN
3 APPROVING THE LEASE AMENDMENT FOR PREMIER HOLDINGS, LLC

4 -----
5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City Council of the City of Auburn hereby authorizes the City
7 Manager or his designee to approve the lease amendment (lease extension), in
8 favor of Premier Holdings, LLC, for the period identified and further authorize the
9 execution of all related documents.
10

11
12 DATED: November 25, 2013
13

14 _____
Kevin Hanley, Mayor

15 ATTEST:

16 _____
17 Stephanie L. Snyder, City Clerk
18

19 I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify
20 that the foregoing resolution was duly passed at a regular meeting of the City
21 Council of the City of Auburn held on the 25th day of November, 2013 by the
following vote on roll call:

22 Ayes:

23 Noes:

24 Absent:

25 _____
Stephanie L. Snyder, City Clerk
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